FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 29 1960
JAMES R. BROWNING, Clerk

No. 395

In the Supreme Court of the United States

OCTOBER TERM, 1960

HUEY CASH, FULLER CASH AND ARTHUR REAGAN, JR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

MALCOLM RICHARD WILKEY,
Assistant Attorney General,

BEATRICE ROSENBERG,
THOMAS A. LATTA,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX.

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	3
Conclusion	4
Cases:	
Krulewitch v. *United States*, 336 U.S. 440	4
Schine Chain Theatres, Inc. v. *United States*, 334 U.S. 110	4
United States v. *United States Gypsum Company et al*, 333 U.S. 364	4

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 395

HUEY CASH, FULLER CASH AND ARTHUR REAGAN, JR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 9-11) is reported at 279 F. 2d 159.

JURISDICTION

The judgment of the Court of Appeals was entered on June 10, 1960 (Pet. 9). A petition for rehearing was denied on August 12, 1960 (Pet. 12). The

petition for a writ of certiorari was filed September 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a declaration of a co-conspirator, made during and in furtherance of the conspiracy outside the presence of the other co-conspirators, is admissible as evidence against other members of the conspiracy.

STATEMENT

The petitioners were convicted in the United States District Court for the Northern District of Georgia of conspiracy to violate and of substantive violations of the liquor laws. Petitioner Huey Cash was sentenced generally to imprisonment for 2 years and the others to imprisonment for one year (R. 2-6, 312-315). On appeal, the judgment was affirmed by the Court of Appeals (Pet. 11).

Petitioners do not contest the sufficiency of the evidence generally, but challenge only the admissibility of evidence of the acts and declarations of an alleged co-conspirator Jimmy Sanders who was indicted but not tried (Pet. 5). The pertinent evidence on this issue was as follows:

On March 20, 1958 John Evans, who was working with a Federal Alcohol and Tobacco Tax Agent (R. 29-30, 49), told petitioner Huey Cash that he wanted to start "hauling" a little whiskey, (R. 16-17). Cash said he could supply Evans with all he wanted at $35.00 a case (R. 17). The next morning, when

Evans, in front of Huey Cash's house, said he had come for the whiskey, a voice which Evans thought was Huey Cash's told him to see Jimmy (R. 18-20). Jimmy Sanders, a Negro sharecropper, lived in a house on Cash's property a few hundred yards away (R. 23, 248-249). Evans drove to Sanders' house and gave him $140.00 for several cases of non-tax-paid whiskey (R. 20, 51).

A day or two later, Evans went back to Cash's house and told him he wanted to buy more whiskey (R. 21). Cash said that whenever Evans wanted whiskey he was to see Jimmy (R. 28). On the following morning (R. 52), Evans purchased from Sanders for $140.00 several cases of whiskey kept in a nearby church (R. 25).

On April 1, 1958 (R. 53), Cash told Evans and Agent Powell that he would make arrangements with Jimmy to have whiskey for them the following morning (R. 53-54, 63). The next day, Sanders told Evans that Huey Cash had directed him to let Evans have the whiskey, but that Sanders had already sold all they had (R. 24). This last declaration was admitted over the objection of the defendants (R. 24).

ARGUMENT

Petitioners contend that the Court of Appeals, in affirming the judgment of the District Court, has broadened the scope of hearsay testimony in conspiracy cases. (Pet. 6). It is, however, firmly established that statements by a conspirator made in furtherance of a going conspiracy are admissible as

exceptions to the hearsay rule. *Krulewitch* v. *United States*, 336 U.S. 440, 453; *United States* v. *United States Gypsum Company et al.*, 333 U.S. 364, 393; *Schine Chain Theatres, Inc.* v. *United States*, 334 U.S. 110, 117. There was ample evidence, independent of the challenged declaration, that Sanders was a member of the conspiracy which was admittedly proved as to petitioners. The facts that Cash sent Evans to Sanders after arrangements had been made for the sale of whiskey, and that Sanders then consummated the sale, fully justify the inference that Sanders was a party to the criminal enterprise.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

MALCOLM RICHARD WILKEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
THOMAS A. LATTA,
Attorneys.

SEPTEMBER 1960

☆ U. S. GOVERNMENT PRINTING OFFICE 1960 983900 339